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RUEHWL/AMEMBASSY WELLINGTON PRIORITY 2383

RHHMUNA/CDR USPACOM HONOLULU HI PRIORITY

RHEHNSC/NSC WASHDC PRIORITY

RUEAIIA/CIA WASHINGTON DC PRIORITY

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RHEFDIA/DIA WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 03 BANGKOK 002616

SIPDIS

EAP FOR MLS, DRL FOR BUCKLEY, NSC FOR PHU

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TAGS: PGOV PHUM PINR PREL TH

SUBJECT: THAI COURT RULINGS DELIVER FURTHER BLOWS TO SAMAK  
AND THAKSIN

REF: BANGKOK 2091

Classified By: DCM James F. Entwistle, reasons 1.4 (b, d)

¶1. (C) Summary: Thailand's independent Electoral Commission (EC) voted unanimously September 2 to seek a Constitutional Court order to dissolve the ruling People's Power Party (PPP) due to vote buying by red-carded former deputy party leader Yongyuth Tiyapairat in the December 2007 election. This triggers a process that will take months to play out. The dissolution of the PPP, comprised primarily of Thaksin loyalists, would signify PM Samak Sundaravej's political demise were it to be realized; the looming threat may influence Samak's calculations about the wisdom of dissolving Parliament amid ongoing anti-PPP protests. Also on September 2, the Supreme Court's Criminal Division for Holders of Political Positions agreed to proceed with a second lawsuit against ex-PM Thaksin filed by the Office of the Attorney General (OAG) for alleged abuse of power involving telecommunications excise taxes Thaksin imposed while Prime Minister that supposedly favored his own telecommunications company AIS. Separately, the court also announced the panel of nine judges who will consider the confiscation of Thaksin's 76 billion baht (\$2.3 billion) assets currently frozen on October 16, if no challenge to the selection of the judges is raised before then.

¶2. (C) Comment: The EC decision had previously been expected August 19 but was delayed for internal procedural reasons until September 2; the timing was completely coincidental to the ongoing crisis which started August 26 with street protests by the People's Alliance for Democracy (PAD). PPP MPs are already anticipating that the eventual decision will go against the PPP, have set up an alternative Puea Thai (For Thai) Party, and have suggested to us they will move en masse once Thaksin sends the signal. Under the Thai judicial system, Thaksin cannot be charged in absentia, but the decision to proceed with the telecom case until that point, as well as consideration of confiscation of his assets frozen in Thailand, keeps the pressure on Thaksin. The developments continue a recent trend of the courts and independent institutions asserting themselves in taking on prominent political elements once considered untouchable. End Summary and Comment.

EC votes to dissolve PPP, triggering process

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¶3. (U) The Thai EC ruled unanimously Sept. 2 in favor of dissolving PM Samak Sundaravej's PPP -- comprised primarily of Thaksin loyalists -- based on evidence of electoral fraud by former deputy party leader and temporarily House Speaker Yongyuth Tiyapairat and on new provisions in the 2007 Constitution that hold parties liable for transgressions by their leaders. The initial charges stem from Yongyuth's behavior in Chiang Rai province during the campaign for the December 23, 2007 general election, and claims Yongyuth had bribed local village officials. Yongyuth has maintained his innocence, but the Supreme Court on July 8 upheld the EC's finding that Yongyuth had violated the election law, determining that he was ineligible to hold public office. Yongyuth's position on the PPP Executive Board at the time of the infraction enabled the Constitutional Court to consider dissolution of the PPP under Article 237 of the 2007 Constitution with all its executives subject to a five-year ban on political activity (reftel).

¶4. (SBU) The process going forward will take months to resolve completely. According to established procedure, the EC's recommendation to dissolve the PPP will be submitted to the Office of the Attorney General (OAG), which will have 30 days to review the case. If the OAG agrees with the EC's findings, the case will be submitted to the Constitutional Court for a final ruling. If the OAG disagrees, a joint committee will be established to review the evidence and make a decision within 30 days. Should the joint committee not be able to make a decision, the final decision to submit to the Constitutional Court reverts back to EC. Even if Samak weathers the current political storm, he would lose all

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formal authority the moment that the Constitutional Court delivers its verdict, if the Court ruled to dissolve PPP. PPP MP and Party Spokesman Kuthep Saikrachang told us that the party knew of the EC's verdict in advance of the September 2 announcement; Kuthep stated that the party was not concerned about the future. The dissolution process, he noted, will take several months, giving the PPP plenty of time to prepare for a legal battle.

¶5. (C) Note: A similar EC ruling which earlier resulted in the disbandment of Thaksin's Thai Rak Thai (TRT) party triggered a process that took around nine months. Two other party dissolution cases are already in the pipeline based on April 11 EC rulings against the Chat Thai and Matchima Thippatai parties; five months later, those cases still await the conclusion of OAG investigations and submission to the Constitutional Court. Based on this track record, it would be reasonable to expect a minimum of two months before the OAG might decide to file a request with the Constitutional Court for the PPP's dissolution. Constitutional Court deliberations would then likely take months more, even if the Court would find a way to accelerate its procedures in this case. (Note: Supporters of former Prime Minister Thaksin, who provides behind-the-scenes leadership for PPP, often allege that the Court is ill-disposed toward Thaksin and PPP.)

Plans for new party, but no Samak

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¶6. (C) If the court sides with the EC, all PPP MPs who are not on the Executive Board would have the option of moving to another party and would retain their seats; only the Executive Board would be dissolved. Other PPP MPs as well as former Minister Jakraphob Penkair have told us in recent weeks that they are active in setting up the Puea Thai party as an alternative for pro-Thaksin MPs; "all it will take is a signal from Thaksin in London, and we will move en masse," one MP said. Even a group seen as internal PPP dissidents, the Isaan Pattana faction, told us that they would move to Puea Thai when the time was right, rather than looking for a different political home. A new party leader would also emerge, since Samak would be disqualified from holding office.

Supreme Court deals more blows to Thaksin

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¶18. (C) In a separate development September 2, the Supreme Court's Criminal Department for Holders of Political Positions accepted the telecom concession lawsuit against Thaksin for trial. Attorney-General Chaikasem Nitisiri filed the suit according to the recommendation of the now defunct Asset Examination Committee. The court scheduled the first hearing on October 15, despite Thaksin's current exile status in Britain and his near certain guarantee not to return to Thailand for the trial. Thai law requires a defendant to be present for the formal opening of criminal procedures; there is no provision for initiating criminal trials in absentia. A credible source at the Ministry of Justice told us that the Supreme Court had accepted the lawsuit as a matter of judicial procedure, despite the defendant being in exile, but that Thaksin would have to appear before the court on October 15 for the trial to proceed. Presuming Thaksin remains in the UK, the court could either suspend the case or decide to issue a second arrest warrant against Thaksin, opined the source.

¶19. (SBU) Note: The new lawsuit alleges that then-PM Thaksin engineered a telecommunications excise tax in lieu of concessions fees, costing Thailand 2 billion U.S. dollars in owed taxes. A controversial 2003 Cabinet resolution approved the suspension of concession fees paid by private companies like Thaksin-controlled AIS in exchange for an excise tax on all telecom companies that could be deducted from revenues. The move at the time was criticized as giving AIS unfair competitive advantage over state-run TOT and CAT Telecom and leading to a loss of government revenue, to AIS/Thaksin's benefit.

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¶10. (U) The Supreme Court's Criminal Department for Holders of Political Positions also announced Sept. 2 the proposed composition of the nine judge panel which will hear arguments regarding the confiscation of Thaksin's 76 billion baht assets (\$2.3 billion) currently frozen. If neither side protests the composition of the panel, the panel will rule on the asset seizure petition filed by the Attorney General on October 16. Media note that four of the nine judges already sit on other panels considering cases of corruption involving Thaksin and members of his former administration (the Ratchadaphisek land case, the telecom concessions case; a rubber saplings corruption case; the ExIm Bank loan to Burma case; and the two- and three-digit lottery case).

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